

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation**

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to adopt and amend sections 3006, 3187, 3188, 3189, and 3331, in the California Code of Regulations (CCR), Title 15, to allow the Department to conform to recent legislation that bans the use and possession of tobacco by inmates, bans the use of tobacco by staff wherever inmates are present, and expands the smoking free zone from 5 feet to 20 feet outside doors and windows. Additionally, the Department has utilized its rule-making authority to extend the ban of tobacco possession to staff and visitors.

PUBLIC HEARING:

Date and Time: **October 6, 2005, 9:00 a.m. - 2:00 p.m.**
Place: Resource Agency Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **October 6, 2005 at 5:00 pm.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)358-2636; or by e-mail at RPMB@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone: (916) 358-1655**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**John McClure
Regulation and Policy Management Branch
Telephone: (916) 358-1655**

Questions regarding the substance of the proposed regulatory action should be directed to:

Steve Lam, Staff Services Manager I
Institutions Division
Telephone: (916) 323-0737.

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION, OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

These revisions and adoption are necessary in order to incorporate as regulation policy refinements that will ensure that Departmental rules accurately reflect legislation that became effective July 1, 2005. Specifically, Assembly Bill 384 prohibits the possession or use of

tobacco products by inmates, with the exception of certain approved inmate religious ceremonies. Additionally, the use of tobacco products by non-inmates, including staff, visitors, and vendors/contractors is also banned wherever inmates under the jurisdiction of the Department are present, with the exception of staff residential housing.

The Department is relying on its general rule-making authority to extend the ban on possession of tobacco products to include staff, visitors, and vendors/contractors. The extension of this prohibition on possession of tobacco products eases administration in that both inmates and staff must abide by the same rules governing use and possession of tobacco. This tobacco prohibition promotes a healthier workplace as well as carries a potential to reduce healthcare and disability costs to the Department by minimizing the exposure of inmates and staff to tobacco products at any location where inmates are present. Assembly Bill 846 changed existing provisions of the Government Code relating to smoking and tobacco control by expanding the smoking free zone from 5 feet to 20 feet outside doors and windows of state buildings.

The Department intends to provide information and promote tobacco cessation programs for both inmates and staff that conform to the security needs of the institutions. The prohibition on possession will reduce the temptation and opportunity for staff, inmates, and visitors to the institutions to traffic in tobacco. Meeting the legislative requirements and the broadened prohibition on staff and visitor possession of tobacco necessitates specific amendments in the Departments existing smoking regulations and other related regulations contained in Title 15 of the California code of Regulations.